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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/545,769	04/10/2000	William J Beyda	OOP7572US	2711

7590 07/02/2003

Siemens Corporation  
Intellectual Property Department  
186 Wood Avenue South  
Iselin, NJ 08830

EXAMINER

HOM, SHICK C

ART UNIT	PAPER NUMBER
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2666

DATE MAILED: 07/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/545,769

Applicant(s)

BEYDA ET AL.

Examiner

Shick C Hom

Art Unit

2666

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10 April 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

Art Unit: 2666

## DETAILED ACTION

### *Claim Objections*

1. Claims 2-5, 7-10, 13-14, and 16-17 are objected to because of the following informalities: in claims 2-5 line 1 delete "A telecommunications system" and insert ---The telecommunications system---. In claims 7-10 line 1 delete "A telecommunications device" and insert ---The telecommunications device---. In claims 13-14 line 1 delete "A method" and insert ---The method---. In claims 16-17 line 1 delete "A system" and insert ---The system---. Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

2. Claims 12-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 12 lines 12-13 and claim 15 line 14 which recite "said quality of service" lacks clear antecedent basis because no quality of service have been previously recited in the claims and therefore the limitation is not clearly understood.

Art Unit: 2666

Claims 13-14 and 16-17 are rejected under 35 U.S.C. 112, second paragraph because they depend from rejected claims 12 and 15, respectively.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371<sup>®</sup> of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claims 1-2, 6-7, 11, 12-13, and 15-16 are rejected under 35 U.S.C. 102(e) as being anticipate by Fijolek et al.

Art Unit: 2666

Regarding claims 1 and 6:

Fijolek et al. disclose the telecommunications system and device, comprising: an Ethernet-type local area network; and one or more telecommunications devices coupled to said Ethernet-type local area network (col. 29 lines 16-27), said one or more telecommunications devices including: an Internet Protocol voice communication stack (col. 29 lines 35-58); a Quality of Service Ethernet layer (col. 29 lines 28-34); and a Generate Quality of Service Ethernet layer interposed between said Internet Protocol voice communication stack and said Quality of Service Ethernet layer and adapted to intercept a second byte in an IP header (col. 29 lines 4-15), identify from said second byte a quality of service required for individual calls, and generate corresponding Quality of Service commands to said Quality of Service Ethernet layer (col. 30 lines 35-64).

Regarding claim 11:

Fijolek et al. disclose the method comprising intercepting a second byte from an Internet Protocol header (col. 29 lines 4-15); identifying from said second byte a quality of service required for individual calls (col. 29 lines 28-34); and generating corresponding Quality of Service commands to a Quality of Service Ethernet layer (col. 30 lines 35-64).

Art Unit: 2666

Regarding claims 12 and 15:

Fijolek et al. disclose the method and system comprising beginning an IP multimedia call (col. 1 lines 24-34); encapsulating corresponding messages for said IP multimedia call in IP protocol data packets (col. 2 lines 8-67); setting a second byte of an IP header for said IP protocol data packets (col. 29 lines 4-34); reading said second byte before said IP protocol data packets are sent over a network; accessing a lookup table, said lookup table containing entries for mapping said second byte to QoS Ethernet quality of service commands (col. 3 line 55 to col. 5 line 5); sending said QoS Ethernet quality of service commands to a QoS Ethernet layer; and sending said IP protocol data packets over an Ethernet network using said quality of service (col. 30 lines 35 to col. 31 line 7).

Regarding claims 2, 7, 13, and 16:

Fijolek et al. disclose the second byte comprising a Type of service byte (col. 3 line 1-38 and col. 29 lines 4-15).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 2666

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made. This application currently names joint inventors. In

considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103<sup>®</sup> and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 3, 8, 14, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fijolek et al. in view of Schuster et al.

Fijolek et al. disclose the telecommunications system, device, method, and system described in paragraph 4 of this office action.

Art Unit: 2666

Fijolek et al. discloses all the subject matter of the claimed invention with the exception of the second byte comprising a Differentiated Service byte as in claims 3, 8, 14, and 17.

Schuster et al. teach that it is known to provide a packet differentiation schemes that allow packets to be tagged for differentiated treatment, e. g., Internet Protocol Version Four (IPv4) specifies a Type of Service ToS byte in the header of an IP packet, which is used to differentiate packets having the format defined and as set forth at col. 7 lines 7 line 55 to col. 8 line 29 in the field of digital and multiplex communications for the purpose of providing a method for testing conformance to service level agreement in networks which clearly anticipate the second byte comprising a Differentiated Service byte as in claims 3, 8, 14, and 17.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the second byte comprising a Differentiated Service byte as taught by Schuster et al. to the method and system of network administration of Fijolek et al. because Schuster et al. teach the desirable advantage of testing conformance to service level agreement in networks and said testing conformance being



Art Unit: 2666

desirable to achieve more efficient system operation in Fijolek et al.

7. Claims 4 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fijolek et al. in view of Bender et al.

Fijolek et al. disclose the telecommunications system, device, method, and system described in paragraph 4 of this office action.

Fijolek et al. discloses all the subject matter of the claimed invention with the exception of the Quality of Service Ethernet layer and the Generate Quality of Service Ethernet layer being modular as in claims 4 and 9.

Bender et al. teach that it is known to provide the layers and their protocols being designed in a modular manner such that each layer or protocol can be modified or updated without the need to modify the remaining layers or protocols as set forth at col. 6 lines 29-37 in the field of digital and multiplex communications for the purpose of being able to define and maintain the interfaces between the layers such that new functions can be easily supported and allows for isolated modification of a layer and its protocol(s) which clearly anticipate the Quality of Service Ethernet layer and the Generate

Art Unit: 2666

Quality of Service Ethernet layer being modular as in claims 4 and 9.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the Quality of Service Ethernet layer and the Generate Quality of Service Ethernet layer being modular as taught by Bender et al. to the method and system of network administration of Fijolek et al. because Bender et al. teach the desirable advantage of providing the ability to define and maintain the interfaces between the layers such that new functions can be easily supported and which allows for isolated modification of a layer and its protocol(s) and said easily supported functions being desirable to achieve cost saving in system operation in Fijolek et al.

8. Claims 5 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fijolek et al. in view of Schuster et al. as applied to claims 1, 3, 6, and 8 above, and further in view of Bender et al.

Fijolek et al. in view of Schuster et al. disclose the telecommunications system, device, method, and system described in paragraphs 4 and 6 of this office action.

Art Unit: 2666

Fijolek et al. in view of Schuster et al. disclose all the subject matter of the claimed invention with the exception of the Quality of Service Ethernet layer and the Generate Quality of Service Ethernet layer being modular as in claims 5 and 10.

Bender et al. teach that it is known to provide the layers and their protocols being designed in a modular manner such that each layer or protocol can be modified or updated without the need to modify the remaining layers or protocols as set forth at col. 6 lines 29-37 in the field of digital and multiplex communications for the purpose of being able to define and maintain the interfaces between the layers such that new functions can be easily supported and allows for isolated modification of a layer and its protocol(s) which clearly anticipate the Quality of Service Ethernet layer and the Generate Quality of Service Ethernet layer being modular as in claims 5 and 10.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the Quality of Service Ethernet layer and the Generate Quality of Service Ethernet layer being modular as taught by Bender et al. to the method and system of network administration of Fijolek et al. in view of Schuster et al. because Bender et al. teach the desirable

Art Unit: 2666

advantage of providing the ability to define and maintain the interfaces between the layers such that new functions can be easily supported and which allows for isolated modification of a layer and its protocol(s) and said easily supported functions being desirable to achieve cost saving in system operation in Fijolek et al. in view of Schuster et al.

***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.  
Chapman et al. disclose dynamic traffic conditioning.  
Li et al. disclose methods and apparatus for packet classification with multi-level data structure.

10. **Any response to this nonfinal action should be mailed to:**

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**or faxed to:**

(703) 872-9314, (for Technology Center 2600 only)

Art Unit: 2666

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington. VA., Sixth Floor (2600 Receptionist at (703) 305-4750).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shick Hom whose telephone number is (703) 305-4742. The examiner's regular work schedule is Monday to Friday from 8:00 am to 5:30 pm EST and out of office on alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema Rao, can be reached at (703) 308-5463.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (703) 306-0377.

SH

June 24, 2003



D. KINGSTON  
TECHNOLOGY EXAMINER